LIBRARY
SUPREME COURT, U.S.
AUG 28 1961
JAMES R. BROWNING, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1960

No. 364

LESTER RAMSEY and CHARLESETTA JACKSON,
Petitioners,
vs.
THE UNITED STATES OF AMERICA,
Respondent

HENRY HEADING,
Attorney for Lester Ramsey,
1308 Broadway, Suite 206,
Detroit 26, Michigan.

BASIL BROWN,
Attorney for Charlesetta Jackson,
2230 First National Building,
Detroit 26, Michigan.

Interstate Brief & Record Co., 356 Congress St. E., Detroit 26, Michigan

TABLE OF CONTENTS

	Page
Opinion Below	2
Jurisdiction	2
Statutes Involved	2-3
Questions Presented	3
Statement of Facts	4-6
Argument	6-12
I. Does the reported record show that the Court properly instructed the jury as to the law applicable to the crime charged?	6-11
II. Are the facts reported in the record of the trial sufficient to sustain a verdict of guilty on Counts Four and Five of the Indictment?	11-12
Conclusion	12
Appendix—Opinion of the United States Court of Appeals for the Sixth Circuit and Judgments	13-18

AUTHORITIES CITED

Cases:

Aeby v. United States, 206 F. 2d 296	9, 10
Bird v. United States, 180 U. S. 356	8
Miller v. United States, 120 F. 2d 968	9
Morris v. United States, 156 F. 2d 525	7
People v. Samuel Harris, 101 N. W. 2d 242	11
Stoppelli v. United States, 183 F. (2) 391	11
United States v. Levy, 153 F. 2d 995	7, 9, 10
United States v. Noble, 155 F. 2d 315	7, 11
Thomas v. United States, 151 F. 2d 183	9
Williams v. United States, 131 F. 2d 21	9, 10

Statutes: Page

Internal Revenue Code of 1954, Sec. 7237 (c)..... 3

United States Code:

Title 28, Sec. 1254 (1)..... 2

Title 26, Sec. 4705 (a)..... 2, 6

Title 18, Sec. 2 (a)..... 1, 2

Title 21, Sec. 174.....1, 3, 6-7

Rules:

F. R. Cr. P., Rule 29..... 12

F. R. Cr. P., Rule 52 (b)..... 12

IN THE

Supreme Court of the United States

OCTOBER TERM, 1960

No.....

LESTER RAMSEY and CHARLESETTA JACKSON,
Petitioners,
vs.
THE UNITED STATES OF AMERICA,
Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Petitioners pray that a writ of certiorari be issued to review the judgment of the United States Court of Appeals for the Sixth Circuit, affirming their convictions for violation of United States Code, Section 4705 (a), Title 26, Section 174, Title 21, and Title 18, Sec. 2(a).

OPINION BELOW

The opinion of the Court of Appeals has not yet been reported; a copy of the opinion is printed as appendix to this petition.

JURISDICTION

The judgment of the Court of Appeals was entered on June 30, 1961. The jurisdiction of this Court is invoked pursuant to 28 U. S. C., Section 1254 (1). Orders of this Court granting an extension of time for filing a writ of certiorari, to and including August 29, 1961, were entered July 28, 1961 and July 19, 1961.

STATUTES INVOLVED

Section 4705 (a), Title 26:

"It shall be unlawful for any person to sell, barter, exchange, or give away narcotic drugs except in pursuance of a written order of the person to whom such article is sold, bartered, or given, on a form to be issued in blank for that purpose by the Secretary or his delegate."

Section 2 (a), Title 18:

"Whoever commits an offense against the United States, or aids, abets, counsels, commands, induces or procures its commission is punishable as a principal."

Section 174, Title 21:

"Who ever fraudulently or knowingly imports or brings any narcotic drug into the United States or any territory under its control or jurisdiction, contrary to law, or receives, conceals, buys, sells, or in any manner facilitates the transportation, concealment, or sale of any such narcotic drug after being imported or brought in, knowing the same to have been imported or brought into the United States contrary to law, or conspires to commit any of such acts in violation of the laws of the United States, shall be imprisoned not less than five or more than twenty years and, in addition, may be fined not more than $20,000. For a second or subsequent offense (as determined under section 7237 (c) of the Internal Revenue Code of 1954), the offender shall be imprisoned not less than ten or more than forty years and, in addition, may be fined not more than $20,000.

Whenever on trial for a violation of this section the defendant is shown to have or to have had possession of the narcotic drug, such possession shall be deemed sufficient evidence to authorize conviction unless the defendant explains the possession to the satisfaction of the jury."

QUESTIONS PRESENTED

I. Does the reported record show that the Court properly instructed the jury as to the law applicable to the crime charged?

II. Are the facts reported in the record of the trial sufficient to sustain a verdict of guilty on counts four and five of the indictment?

STATEMENT OF FACTS

Appellant Ramsey was indicted with one Charlesetta Jackson for violating the Federal Narcotics Law. There were seven counts in the indictment (2a-6a). At the close of the government's case, counsel for Appellant Ramsey made a motion to strike the first count, conspiracy, and the Court granted the motion (23a). The jury found Appellant Ramsey guilty on counts four and five (42a). This meant Appellant Ramsey was not guilty as to counts 2, 3, 6 and 7. For the purpose of this appeal, Appellant Ramsey will confine his remarks and argument to counts four and five of the indictment and the court's charge. The pertinent parts of the indictment are as follows:

"COUNT FOUR:

THE GRAND JURY FURTHER CHARGES:

That on or about February 12, 1959, in the Eastern District of Michigan, Southern Division, Lester Ramsey and Charlesetta Jackson did unlawfully and knowingly sell, barter, exchange or give away to a special employee of the U. S. Bureau of Narcotics, a quantiy of narcotic drugs, to wit; approximately 18.44 grams of heroin, which said heroin was sold, bartered, exchanged or given away not pursuant to a written order issued in blank for that purpose by the Secretary of the United States Treasury; in violation of Section 4705(a), Title 26, USC and Section 2(a), Title 18, USC.

COUNT FIVE:

THE GRAND JURY FURTHER CHARGES:

That on or about February 12, 1959, in the Eastern District of Michigan, Southern Division, Lester Ramsey and Charlesetta Jackson, did unlawfully receive, conceal and have in their possession, after

being imported and brought into the United States, and did aid and assist in the receipt, concealment and possession, of a quantity of narcotic drugs, to wit: approximately 18.44 grams of heroin, well knowing the aforesaid heroin to have been imported and brought into the United States in violation of the provisions of the Act of Congress approved February 9, 1909, as amended, and not under any regulation prescribed by the Commissioner of Narcotics; in violation of Section 174, Title 21, USC and Section 2(a), Title 18 USC."

The testimony as related to February 12, 1959 shows that on this date the informer, Leo Lewis, was brought to the Narcotics Bureau by Agent Davis (19a). At the Narcotics Bureau, Lewis engaged in conversation with Agents Jessup, Howard and Davis (19a). Lewis was searched by Agents Howard and Jessup (11a). The search revealed that the informer at the time had no money or narcotics on his person (9a). Upon leaving the Bureau with Agent Davis, the informer was given Two Hundred ($200.00) Dollars in government funds and a radio transmitter (14a, 20a). The agent and informer proceeded to a point on Davison Street in the City of Detroit where the informer made a phone call to a TOwnsend exchange (19a). The informer talked to one Charlesetta Jackson (9a). Pursuant to the phone call Agent Davis and the informer proceeded to 13620 LaSalle Street in the City of Detroit, where the informer entered the above address while Agent Davis waited for him. The informer gave Charlesetta Jackson Two Hundred ($200.00) Dollars in exchange for two (2) packages containing suspected heroin (10a). Agent Davis was in view of this transaction and could see movement of hands (20a). After receiving the package, the informer returned to the car where Agent Davis had waited for him and entered the car and gave Agent Davis the package he

received from Charlesetta Jackson (20a). Agent Davis and the informer went several blocks and talked briefly with Agent Jessup, who was in the vicinity. After talking with Agent Jessup, Agent Davis and the informer proceeded to the Narcotics Bureau where a field test of the substance received by the informer from Charlesetta Jackson was made, and the contents were delivered to the U. S. Chemist (17a). The containers in which the narcotics were delivered to the informer by Charlesetta Jackson were sent to the Detroit Police Department to be processed for latent fingerprints (17a). Appellant Ramsey's fingerprint was found on one of the containers (22a). Fingerprints belonging to people other than Appellant Ramsey were found on the containers (22a).

ARGUMENT

I.

DOES THE REPORTED RECORD SHOW THAT THE COURT PROPERLY INSTRUCTED THE JURY AS TO THE LAW APPLICABLE TO THE CRIME CHARGED?

The Lower Court says, "Yes."
Appellant Jackson says, "No."

The Indictment (4a-5a) in Count Four charges that Appellant violated certain criminal provisions of the United States Code in violation of Section 4705(a), Title 26, which prohibits the selling, bartering, exchanging or giving away narcotics drugs except in pursuance to a written order on a form issued by the Secretary of Treasury or his delegate and Section 2(a), Title 18, whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal. In Count Five the Indictment charges that Appellant violated Section 174, Title 21,

which prohibits fraudulently or knowingly receiving, concealing, buying, selling or in any manner facilitating the transportation, concealment, or sale of any narcotic drug after being imported or brought in, knowing the same to have been imported or brought into the United States contrary to law and again a violation of Section 2(a), Title 18.

There is little room for argument concerning the duty of the Court to charge the jury on all essential questions of law, whether requested or not and it is considered a grave error to submit the case to the jury without adequately defining the offense charged and its elements. *Morris v. U. S.*, 156 F. 2d 525. The only reference made by the Court concerning the essential questions of law in relation to the offense charged and its elements is found at pages 26a-27a, of Appellant Joint Appendix and this reference is nothing more than oral excerpts from the Indictment. This reference to the Indictment did not even contain the complete substance of the Indictment as to Counts Four and Five and if it had been an exact and complete statement of these Counts from the Indictment it would not have been sufficient to properly advise the jury concerning the essential questions of law involving the offense charged and its elements.

In *United States v. Noble*, 155 F. 2d, 315, the Circuit Court of Appeals decided that the jury must be instructed upon the rules of law which they are to apply, the most fundamental and important of which are the essential elements of the crime charged and that actual possession of the "information" by the jury is not sufficient to satisfy this mandate even if it contained a full recital of all applicable legal principles. The Court, in discussing *United States v. Lyon*, 153 F. 2d, 995, says:

> "We deemed the error so fundamental that we took notes of it even though the defendant had not requested the instructions."

The Court then says that the "Levy Case" is controlling unless the trial judge's failure is rendered harmless by reason of his having sent the information out with the jury and in deciding this question they say, at page 318:

> "In making that determination it was necessary for them (the jury) to apply the law to the facts as they found them to be. Accordingly it was essential that they be instructed upon the rules of law which they were to apply, * * * Moreover, we think that even if the information had contained a full recital of the applicable legal principles the trial judge would not have fulfilled his duty in this regard merely by sending the information out with the jury to read if they chose to do so during their deliberations."

The Court further explains, in a footnote (1), page 317, quoting from *Bird v. United States*, 180 U. S. 356:

> "It is well settled that the defendant has a right to a full statement of the law from the court, and that a neglect to give such full statement, when the jury consequently fall into error, is sufficeint reason for reversal. * * * The Chief object contemplated in the charge of the judge is to explain the law of the case, to point out the essentials to be proved on the one side and the other, and to bring into view the relations of the particular evidence adduced to the particular issues involved."

Significantly the *Noble Case* involved charges of violation of O. P. A. ration orders contained in six counts, a conviction on all six counts and a sentence of one-year on each count, the terms to run consecutively except as to two

counts. Certainly, this case was less substantial in its seriousness than the instant case.

In *United States v. Levy*, 153 F. 2d, 995, on page 998, the Court said in reversing a conviction obtained under the Emergency Price Control of 1942:

> "In his instructions to the jury the trial judge did not describe the offenses charged in the indictment. He did not even mention the pertinent provisions of the Emergency Price Control Act of 1942, as amended or of Maximum Price Regulations 193 and 445. The various counts in the indictment charged briefly that defendant 'did wilfully, unlawfully, and knowingly sell' to a specified person, a certain amount of whiskey at a stated price, a price that was a certain sum in excess of the maximum price, stating the maximum price, in violation of the Emergency Price Control Act of 1942 as amended, and contrary to the provisions of Maximum Price Regulation 193 (or 445 as the case might be), issued pursuant to the said Emergency Price Control Act of 1942 as amended, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States."

These cases provide ample authority to indicate that in the instant case the meager references to the indictment made by the trial judge do not satisfy his obligations to properly state the fundamental law concerning the charges made and the necessary elements thereof. See *Williams v. United States*, 131 F. 2d, 21; *Miller v. United States*, 120 F. 2d, 968 and *Thomas v. United States*, 151 F. 2d, 183.

In *Aday v. United States*, 206 F. 2d, 296, the Circuit Court of Appeals, sitting in Texas, refused to upset a conviction obtained against two defendants who were found

guilty by a jury of violating the Federal Narcotics Laws and they decided that upon the facts of that case, the nature of the offenses and the manner in which these were charged in the indictment that there was no necessity for the court to charge the jury in the terms of the statute under which the prosecution was proceeding. However, in this case the question was one of possession only and the court's charge contained statements concerning statutory presumptions, actual possession, constructive possession and the knowledge required to substantiate the same, and concerning the relationship of principal and accessory. The charge in the *Acby Case* is obviously much more complete in its measure of setting forth the fundamentals of the offense charged and the elements thereof.

In each of Counts Four and Five Appellant was charged with the violation of two specific Federal Statutes. The charge by the trial judge touched upon statutory language of one statute in each Count, Section 4705 (a) Title 26, and Section 174, Title 21, United States Code, but made no attempt to charge nor to explain in either Count, Section 2(a), Title 18, United States Code. The rule enunciated by the Court in *Williams v. United States*, 131 F. 2d 21, and in *United States v. Levy*, 153 F. 2d 995, distinguish the *Acby Case* and strongly urge to the contrary.

In this decision of Circuit Judge O'Sullivan, No. 14461, not yet reported, at page four, paragraph four, the Court says "During the jury's deliberations they were given the indictment" and further in the same paragraph says "under the facts of this case, we are not persuaded that the Court's charge was so inadequate as to call for reversal". In Defendant-Appellant's Appendix, which contains the charge of the District Judge and the deliberations of the jury, up to and including their final ver-

dict, there is discussion between the jury foreman and the District Judge, concerning the indictment, but nowhere, does this record show that the jury had the indictment in their physical possession as was assumed and stated by Circuit Judge O'Sullivan in his opinion. Many of the cases cited by the Defendant-Appellants in their brief to the Circuit Court of Appeals for the Sixth Circuit hold that an inadequate charge cannot be cured by the jury having the indictment in their physical possession or by having the indictment read to them as a part of the charge, *United States v. Noble*, 155 F. 2d 315.

II.

ARE THE FACTS REPORTED IN THE RECORD OF THE TRIAL SUFFICIENT TO SUSTAIN A VERDICT OF GUILTY ON COUNTS FOUR AND FIVE OF THE INDICTMENT?

The Lower Court says, "Yes."
Appellant Ramsey says, "No."

It is clear that there is no evidence to show Appellant Ramsey was guilty of Counts four and five of the indictment. The only evidence that has any bearing on the innocence or guilt of Ramsey is that his fingerprint was found on a container the internal revenue already received from Defendant Jackson on February 12, 1954. This evidence is insufficient to sustain a conviction because the government failed to prove as to when the print was placed upon the container. The case of *People v. Nelson*, *Illinois*, 101 N. E. 2d 812 is more in point than the *Stapleton Case* cited by the government. An expert witness testified in the *Stapleton Case* that in his opinion the barrettes were in the container at the time the defendant's print was placed upon the container. There is no such expert testimony in the present case. It is interesting to note the Court of Appeals Court made no mention in its opinion of

when the print of defendant Ramsey was placed upon the container. The only way to determine when the print was placed upon the container is by inference; but by doing this the doctrine of inference upon inference is brought into play.

The lower court mentions the fact that no motion of acquittal was made at the close of the government's case, (Rule 29 F. R. Cr. P.) and states that in the absence of such motion, it would not ordinarily consider the question of the sufficiency of the evidence. Rule 52 (b) F. R. Cr. P. states that if life or liberty is involved, Appellate Courts may consider the sufficiency of the evidence if plain error is committed. This case justifies the exercise of extraordinary authority.

Appellant Ramsey agrees that a conviction may be had where the government *primarily* relies upon fingerprints, but Appellant believes that no conviction may be had where the government relies solely on fingerprints.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be granted.

Respectfully submitted,

HENRY HEADING,
Attorney for Lester Ramsey,
1308 Broadway, Suite 206,
Detroit 26, Michigan.

BASIL BROWN,
Attorney for Charlotta Jackson,
2230 First National Building,
Detroit 26, Michigan.

APPENDIX

No. 14461

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA, *Plaintiff-Appellee*, v. LESTER RAMSEY and CHARLESETTA JACKSON, *Defendant-Appellants*.	APPEAL from the United States District Court for the Eastern District of Michigan, Southern Division.

Decided June 30, 1961.

Before MILLER, Chief Judge, CECIL and O'SULLIVAN, Circuit Judges.

O'SULLIVAN, Circuit Judge. Defendant-Appellants, Lester Ramsey and Charlesetta Jackson, appeal from judgments of conviction entered upon a jury's verdict finding each of them guilty of two counts (counts four and five) of an indictment charging them with possession and sale of narcotics on various dates in violation of Section 4705 (a), Title 26, U. S. C. A., and Section 2(a), Title 18, U. S. C. A. The indictment contained seven counts, the first of which charged the defendants with conspiracy to violate the mentioned statutes. This conspiracy count was dismissed at the close of the government's case. The jury

acquitted the defendants on four of the remaining counts. Counts four and five (upon which the defendants were convicted) related to a transaction in narcotics which occurred on February 12, 1959, in the City of Detroit.

For reversal defendant Ramsey asserts, first, that there was not sufficient evidence to warrant submission of the question of his guilt to the jury, and, second, that the district judge failed to adequately instruct the jury as to the law applicable to the crime charged. Defendant Jackson relies for reversal on the said claimed failure of the district judge to properly instruct the jury and upon the further ground that her involuntary absence from the courtroom during a portion of the court's charge to the jury violated Rule 43 of the Federal Rules of Criminal procedure.

There was evidence that defendant, Lester Ramsey, prior to and during the months of December, January and February, 1959, was living at an apartment at 13620 LaSalle, Detroit. The defendant Charlesetta Jackson was his lady friend and was accustomed to spend three or four days and nights of each week at Ramsey's apartment. A principal witness for the government, one Lewis, was acquainted with both defendants and had had transactions with them involving the sale and purchase of narcotics. He would properly be classified as an informer and special employee of the Narcotics Bureau. On February 12, 1959, collaborating with agents of the Narcotics Bureau, he placed a telephone call to the Ramsey apartment. The defendant Jackson was there, and in the ensuing telephone conversation arrangements were made for Lewis to go to the apartment to purchase a package of narcotics. With another agent, he drove to the Ramsey apartment and while the other agent waited in a car, met defendant Jack-

son at the back door of the building in which the Ramsey apartment was located. Lewis paid the defendant Jackson $200.00 and received from her two envelopes containing heroin. Examination of these two envelopes disclosed fingerprints of defendant Ramsey on each of them.

The witness Lewis told of a transaction which occurred on December 19, 1958, when he called the same Ramsey apartment and talked with Ramsey, arranging to purchase narcotics and was told by Ramsey to come to the apartment to pick it up. Lewis did so, finding defendant Jackson there. While Lewis was there, defendant Ramsey called by telephone and told Charlesetta that it was all right to complete the narcotics transaction. It was so done. At Christmas time in 1958, the defendants joined in sending a Christmas card containing their pictures with the greeting, "The Ramseys, Lester and Charlesetta."

1. *Sufficiency of evidence as to defendant Ramsey.* Defendant Ramsey here charges that proof of his fingerprints on the two envelopes of narcotics sold by defendant Jackson to the government agent, was not sufficient evidence of participation in the sale and possession of the narcotics by him to justify his conviction, either as a principal or as aiding and abetting. No motion for a direction of acquittal was made by him at any time. In the absence of such motion, we will not ordinarily consider the question of the sufficiency of the evidence. *Rosenbloom v. United States*, 259 F. (2) 500, 502 (C. A. 8, 1958); *Moorman v. United States*, 229 F. (2) 589, 592 (C. A. 5, 1955); *Lowenthal v. United States*, 274 Fed. 563, 571 (C. A. 6, 1921); *Mitchell v. United States*, 265 F. (2) 854, 857 (C. A. 8, 1954). If we observed plain error or an obvious miscarriage of justice, we could, with propriety, set aside a conviction despite the absence of such a motion. *Lowenthal v. United States, supra.* Aside, however, from the

fingerprint evidence, the jury had before it the relationship between the defendants and their obvious collaboration in the business of selling narcotics, the evidence of the December 19th transaction when Charlesetta made the delivery in fulfillment of an order placed with Ramsey. Defendant Rasmey did not take the stand. Defendant Jackson denied the alleged sale of February 12, but testified that she had been in the habit of purchasing cocaine from the government's witness, Lewis. The jury had before it the foregoing evidence, in addition to the fingerprint identification. Convictions for narcotic violations have been upheld where the government's reliance was primarily on the finding of a defendant's fingerprints on the packages involved. *Stoppelli v. United States* (C. A. 9, 1950), 183 F. (2) 391, cert. denied, 340 U. S. 864; *United States v. Pisano*, 193 F. (2) 361 (C. A. 7, 1951). We do not find such plain error or miscarriage of justice as would prompt us to reverse for insufficiency of evidence. The language of Judge Knappen in the *Loewenthal* case is appropriate here,

> "We cannot weigh the evidence. In our opinion, the case does not justify the exercise of the extraordinary authority referred to."

2. *Adequacy of the trial court's charge.* Without particularizing here, or in the district court, on what was lacking in the court's charge, both appellants by their statements of questions involved ask whether the "court properly instructed the jury as to the law applicable to the crime charged." Neither defendant requested an instruction which was refused nor made any objection to, or suggested any change in or amplification of, the charge as given. Rule 30 of the Federal Rules of Criminal Procedure would, therefore, foreclose the claim of error here asserted,

unless the court's charge was so lacking in explanation of the offenses charged and their elements as to be fundamentally erroneous and inadequate. Plain error would be noted by us even though there was no request for instruction on the point. *United States v. Levy*, 153 F. (2) 995 (C. A. 3, 1946); *Morris v. United States*, 156 F. (2) 525 (C. A. 9, 1946); *Suhay v. United States*, 95 F. (2) 890 (C. A. 10, 1938); *Williams v. United States*, 131 F. (2) 21, 23 (C. A. D. C. 1942).

Conversely, "in the absence of a request for a charge, a reversal is justified only if the failure to instruct constitutes 'a basic and highly prejudicial error'." *United States v. Gordon*, 242 F. (2) 122, 126 (C. A. 3, 1957).

In the case before us, the court, early in his charge, said:

> "Now this case is brought on a six count indictment. There were originally seven counts, but by motion of the defendant's attorney, the judge dismissed the conspiracy count, which was number one, and the court will analyze to you the charges which we are now trying against these two defendants."

This preliminary observation was followed by the trial judge's review of the charges contained in each count of the indictment, although he did not read the content of each count in full or read the statutes claimed to have been violated. During the jury's deliberations, they were given the indictment. We do not consider the case under consideration complicated. It is easy for a jury to understand the criminality involved in the sale and possession of narcotics. It was likewise not difficult to evaluate the proofs offered in this case to establish the commission of the offenses charged. Under the facts of this case, we are not persuaded that the court's charge was so inadequate as to call for reversal. *United States v. Gordon, supra;*

Giardano v. United States, 251 F. (2) 109, 117 (C. A. 8, 1958), cert. denied, 356 U. S. 973; *Beale v. United States*, 263 F. (2) 215, 217 (C. A. 5, 1959).

3. *Absence of defendant Jackson at beginning of court's charge.* After the trial judge had begun his charge to the jury, it was discovered that Charlesetta Jackson was absent from the courtroom. The charge was suspended and resumed when she returned to the courtroom. What had been said by the judge during her absence is described in her brief here as, "relatively innocuous in its import." We agree, and find no reason to reverse because of the incident.

The judgments are affirmed.

JUDGMENTS

The judgments are affirmed.

O'Sullivan,
Circuit Judge.